

**NOTICE OF INTENT TO FILE CITIZEN SUIT
FOR CLEAN WATER ACT ENFORCEMENT**

VIA CERTIFIED U.S. MAIL; RETURN RECEIPT REQUESTED

March 12, 2016

To:

Toledo Area Sanitary District (TASD)
5015 Stickney Ave.
Toledo, OH 43612

Ohio EPA
P.O. Box 1049
Columbus, OH 43216-1049

Craig W. Butler, Ohio EPA Director
50 W. Town St., suite 700
Columbus, OH 43215

Ohio EPA, NW District
347 N. Dunbridge
Bowling Green, OH 43402

Gina McCarthy
U.S. EPA Administrator
1200 Pennsylvania Ave., NW
Washington DC, 20460

Toledo Area Sanitary District (TASD) is a quasi-governmental agency in Toledo, Lucas County, Ohio that routinely discharges hundreds of gallons of chemical pesticides each year into residential neighborhoods and waterways covering 300,000+ acres of land and 400,000+ people.

Duet, a “dual-action synergized synthetic pyrethroid”, an *endocrine disruptor* linked to **breast cancer**; and **Mosquitomist**, an organophosphate (OP) nerve agent, are two products TASD discharges routinely. The World Health Organization has determined that an OP nerve agent likely causes **prostate cancer** and **non-hodgkin’s lymphoma** in humans residing near sprayed areas.

The U.S. EPA Product Label for these products contains the following:

DUET: “HAZARDOUS TO HUMANS AND DOMESTIC ANIMALS... highly toxic to aquatic organisms, including fish and aquatic invertebrates. Runoff from treated areas ... may be hazardous...” (U.S. EPA, emphasis *not* added).

MOSQUITOMIST: “HAZARDOUS TO HUMANS AND DOMESTIC ANIMALS... This pesticide is toxic to fish, aquatic invertebrates, small mammals and birds.” (U.S. EPA, emphasis *not* added).

The U.S. EPA Product Label for these products makes it unlawful to discharge them routinely under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Under the Federal and Ohio Water Pollution Control Acts, 33 USC 1251, et. seq., and ORC Chapter 6111 (hereafter collectively referred to as the "Clean Water Act"), pesticide polluters must comply with Ohio EPA's NPDES Permit No:OHG870001 (Pesticide General Permit).

The Pesticide General Permit was enacted in response to the decision of the United States Court of Appeals for the Sixth Circuit in the landmark case of *National Cotton Council v. U.S. EPA*, 553 F.3d 927 (6th Cir. 2009). The *National Cotton* court declared that a "pesticide" is a "pollutant" under the Clean Water Act. This was a watershed victory for the People as against the Chemical-Pesticide Industry, which had become accustomed to the unregulated discharge of its products due to the powerful influence of its lobbyists. (See *Power, Politics, and Poison: The Story Behind National Cotton Council of America v. U.S. EPA*, 41 Env'tl. L. Rep. News & Analysis 10946).

Under the Pesticide General Permit, large-volume-chemical-pesticide polluters such as T ASD must comply with the mandatory provisions of **Part V.** of the permit. T ASD must publish a detailed Pesticide Discharge Management Plan (PDMP) designed to minimize the amount of chemical pesticides, **IF ANY**, that are discharged where "the pesticide will be unavoidably deposited to surface waters." The PDMP must document what non-toxic measures were taken and why they have failed prior to the discharge of any chemical pesticides. The PDMP must document what "action threshold" in the ecosystem needs to be reached that might allegedly necessitate the discharge of chemical pesticides in a "treatment area". The PDMP "must document why larviciding is not the primary pesticide to effectively manage mosquitoes".

Under Part IV. of the permit, T ASD's Decision Maker must provide "information on each treatment area to which pesticides are discharged, including: ... Action Thresholds... Method and/or data used to determine action threshold(s) has been met... Description of pest management measure(s) implemented prior to the first pesticide application... Quantity of each pesticide product applied to each treatment area... (and, among other things) Pesticide application date(s)".

Under Part VI.E. of the permit, T ASD must "take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment."

Although T ASD has been required to comply with the Pesticide General Permit since its effective date, October 2011, the people of Lucas County have yet to gain any benefit from this law.

I have lived in Lucas County for most of my life -- long enough to see the bats, bees, frogs, toads, butterflies, and dragonflies diminish in numbers over the years. But I had never heard of T ASD's chemical-pesticide operation until I found dead baby Eastern Bluebirds in a nestbox in the valley of the Ottawa River in which I live. Research indicated that pesticides were a likely cause -- and I then learned that T ASD had just "treated" the river valley where I live with chemical pesticide.

I soon learned the truth: chemical pesticides are an ineffective and harmful way to attempt to control mosquitoes. Routine use of chemical pesticides is not sustainable. I learned that the CDC, the EPA, and all scientific papers on the topic condemn the routine use of chemical pesticides. I learned that several communities near Lucas County have BANNED the use of chemical pesticides to treat mosquitoes. And I learned that the majority of the modern civilized world does not deploy chemical weapons of this sort in their own residential neighborhoods.

Outraged, I wrote a letter to my local representatives, the Ottawa Hills Village Council. Ottawa Hills is a village in Lucas County covering 1000+ acres of the Ottawa River valley where 4000+ people reside. Village administration and council members confirmed that they did not know much about T ASD, if anything. They said we have no control over T ASD, because T ASD is from "the county". They said we are compelled to pay it via direct appropriation of our property taxes, and it just takes the money and does what it does – drive trucks around our neighborhoods spraying something at our houses, presumably to control mosquitoes, but we don't really know what, where, when, or why?

Because little was known, if anything, about T ASD and what it was doing in our neighborhoods, the Services and Environment Committee (a subset of Village Council) asked T ASD to come explain itself. T ASD sent a representative to stage a dog-and-pony show complete with a prop and a handout from the Chemical-Pesticide Industry. Even T ASD's own handout did not advocate *routine* use of chemical pesticides.

The T ASD representative said something to the effect of "the EPA does not let me call these chemicals 'safe'... but, really, they are" – the T ASD representative stated that "the chemicals most certainly don't harm any fish" – as if, the T ASD representative implied, one would have to be very naïve and gullible to believe that chemicals could possibly harm fish.

Unsatisfied with this presentation, the Services and Environment Committee recommended to council and the mayor that a Task Force be formed "to review, understand and evaluate the adulticide (mosquito spraying) done by the Toledo Area Sanitary District." (Report and Recommendations to Village Council Re: Mosquito Task Force, February 9, 2015, hereafter the Task Force Report). The Task Force was a group of citizens chaired by a council member and including, among other professionals, two scientists and a physician. I was not a member of the 7-citizen Task Force, but I attended every meeting, start to finish, where I was personally intimidated and ridiculed by a T ASD agent.

T ASD's open violation of the Clean Water Act soon became clear.

T ASD told the Task Force that it discharges chemical pesticides routinely in residential neighborhoods because "it is too expensive to base spray decisions on surveillance data".

At that time, between the 2014 and 2015 "spray seasons", T ASD had not yet begun to pretend that its spray decisions are based on any data. T ASD hits each residential neighborhood with

chemical pesticides at least three times per year. Densely-populated urban areas receive the most chemical pesticides. (populated with people, that is, *not* mosquitoes).

TASD told the Task Force that it discharges chemical pesticides routinely directly into all waterways in Lucas County from spray trucks driving across bridges.

The Task Force requested that TASD “‘turn off’ the truck-mounted spray apparatus while crossing any bridge over the Ottawa River or other waterways.” (Task Force Report).

The Task Force requested that decisions to spray chemical pesticides into our neighborhoods be “more closely related to actual field conditions regarding numbers of mosquitoes, types of mosquitoes, (and) the threat to human health.” (Task Force Report). This request included asking TASD to allow members of our community to be apprised of and involved in assessing the field data gathered in the village and establishing the ‘action thresholds’ that we would use to trigger a spray decision in our community.

In response to this request, TASD told the people of Ottawa Hills that it would cooperate and create a “pilot adulticide program” in Ottawa Hills. (Task Force Report). Only in Ottawa Hills, we were told, it would not spray routinely. Unlike the rest of Lucas County, where TASD stated its intention to spray chemical pesticides routinely all summer long.

TASD then prepared a “powerpoint” presentation to distribute to other chemical-pesticide polluters to inform them about the “terror” caused by the people of Ottawa Hills. It provides a map of Ottawa Hills and names me, in large font, indicating that I have children. TASD’s publication names the University of Toledo and ridicules its professors. TASD’s publication informs other chemical-pesticide polluters about methods to persuade the public that chemical pesticides are “good”. But warned it may have to do “further work on justification and efficacy of spray events in the 2015 season”. And warned there might be “accountability”. And stated - - “Thanks to Ottawa Hills!” -- TASD “exponentially increased (its) learning curve”, and “look(ed) at better ways to justify” chemical pesticides. (“Defending an Adult Mosquito Control Program: The 2014 Summer of Terror”, TASD official publication).

When June arrived, as usual, TASD’s chemical-pesticide spray trucks began routine chemical-pesticide “treatments” throughout the county each night. The fact that mosquitoes were not present in numbers enough to even be considered a nuisance did not stop it.

In mid-June, Village of Ottawa Hills officials were told that TASD had unilaterally decided it would be spraying throughout our river valley and residential neighborhoods later on that very same day. Village officials were not provided any information about what “action threshold” had been breached. Citizens paying attention were shocked and dismayed by this tyrannical action, especially because mosquito activity was minimal at that time. Perhaps because chemical pesticides had devastated mosquito predators in the area, or perhaps because TASD’s non-toxic efforts were lacking, mosquitoes did come out in abundance within a week or so after TASD’s first village-wide “treatment” of 2015. And more was to come.

One morning, *without any warning*, I observed out my back window a T ASD agent on foot releasing a poisonous mist out into the Ottawa River flood plain 100 yards or so from my back door and from the Ottawa River. This was especially distressing, not only because of the haunting image of an agent with a hazmat mask marching toward my property discharging a cloud of billowing smoke across the "mourning" flood plain, but because I and at least two other neighbors residing nearby had given T ASD written notice that we did not want any poisons sprayed near our properties, and we wanted to be warned if they would be in our area. At least I saw it, so I didn't walk right through there with my dogs and daughter, as I often did.

To understand the urgency of **Clean Water Act enforcement against chemical-pesticide polluters**, see "An Open Letter by Concerned Physicians and Scientists, *Stop the Indiscriminate Spraying of "Friendly Fire" Pesticides*". And please consider that a Professor Emeritus for Public Health from the University of Toledo testified before the Task Force that chemical pesticides, once released into the environment, will persist, and can eventually cross the placental barriers of our unborn children causing permanent damage during critical stages of development.

If fundamental changes are not made regarding the direction of T ASD and its refusal to comply with the Clean Water Act, a lawsuit will be filed to protect the people of Lucas County from further unlawful actions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Matt Cooper', with a long horizontal line extending to the right.

Matt Cooper
aggrieved citizen and
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